IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl..No. 4907 of 2007()

CRIME NO.102/06 OF MANJESHWER POLICE STATION

PETITIONER : ACCUSED

SHALI MOHAMMED, AGED 23 YEARS,
RASHEED VILLA,UDYAVAL,MANJESHURE P.O.,
KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS:

STATE OF KERALA REP. BY OF THE
SUB INSPECTOR OF POLICE,MANJESHWER POLICE STATION,
REP. BY THE PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4907 of 2007

Dated this the 22nd day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. Altogether there are 4 accused persons. They face allegations, inter alia, under Sections 365, 323 and 506(2) r/w 34 I.P.C. Accused 3 and 4 are two women. The defacto complainant was engaged to give tuition for the child of accused 3. The crux of the allegations is that a totally false story was invented by accused 3 and 4 in collusion with accused 1 and 2 that the defacto complainant had illicit intimacy with a servant maid employed in the house of accused 3 and 4. Raising this false allegation, attempt was made to extort money from the defacto complainant. The defacto complainant was illegally abducted in a vehicle by accused 1 and 2. He was forced and compelled to agree to part with money. He was later released. Crime was registered. Investigation is in progress. The petitioner apprehends imminent arrest. The alleged incident took place on 24.03.06. The defacto complainant after he was released had lodged the F.I statement on 25.03.06. The crux of the allegations is that with the intention of extorting money from the defacto complainant in furtherance of the common intention of all the 4 accused, the petitioner the 2nd accused along with the 1st accused took the defacto complainant away in a car. He was allegedly assaulted and intimidated by all the accused persons.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Totally false and vexatious allegations are being raised against the petitioner. The defacto complainant, in fact, had a relationship with the servant of accused 3 and 4. Objections were raised against that and it is then that this false theory has been invented by the defacto complainant to vex and harass the petitioner. It is prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the sequence of events available in this case and the materials collected so far unerringly indicate the culpability of the accused persons including the petitioner. In these circumstances, at any rate, this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioner. This petition may be dismissed and the petitioner may be directed to be resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate. He must then seek regular bail, submits the learned Public Prosecutor .

4. In the nature of the contentions raised, it was felt that it is necessary to peruse the case diary. The case diary was produced. I

have perused the case diary. In particular, I have taken note of the statement given by the maidservant who is employed in the house of accused 3 and 4.

5. At this early stage of investigation, I shall carefully not embark on a detailed discussion on the acceptability of the allegations or the credibility of the data collected. Suffice it to say that after considering all the relevant inputs, I am perfectly satisfied that this is not a fit case where the discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioner. I agree with the learned Public Prosecutor that the petitioner must resort to the ordinary course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-